

JUL 20 2006

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

ERIC OJA,

Plaintiff - Appellant,

v.

BLUE MOUNTAIN COMMUNITY
COLLEGE; MICHAEL SHEA; TRAVIS
KIRKLAND,

Defendants - Appellees.

No. 04-35534

D.C. No. CV-03-00964-OMP
District of Oregon,
Portland

ORDER

Before: FERGUSON, KLEINFELD, and GRABER, Circuit Judges.

The petition for panel rehearing is GRANTED in part. The memorandum disposition filed on June 5, 2006, is amended. The two paragraphs beginning on page three, line three, are amended as follows:

Oja can prevail on his fraud claim if he shows 1) that Defendants made a false representation 2) with the knowledge that it was false, 3) intending Oja to rely on the statement, 4) that he justifiably relied on the representation and 5) he was damaged as a

result of the reliance.¹ With respect to Defendant Blue Mountain, Oja cannot establish a direct theory of misrepresentation because he cannot show that he “justifiably relied” on the representation, because without Board approval, an offer was not within the college’s “lawful powers.”²

However, we reverse the summary judgment of the misrepresentation claim on a theory of vicarious liability under Or. Rev. Stat. § 30.265(1). Oja established a genuine issue of fact as to all five elements on a misrepresentation claim against Shea. Shea was the person with authority to advise people in Oja’s position whether they were hired, and Shea did so advise Oja, unambiguously and emphatically. But because Shea’s actions giving rise to this claim occurred within “the scope of [his] employment,” the claim can only be made against Defendant Blue Mountain.³

¹ *Meade v. Cedarapids, Inc.*, 164 F.3d 1218, 1221 (9th Cir. 1999).

² *Or. ex rel. Dep’t of Transp. v. Hewett Professional Group.*, 895 P.2d 755, 762-63 (Or. 1995) (citations omitted).

³ OR. REV. STAT. § 30.265(1) (2003).

No further petitions for rehearing or for rehearing en banc may be filed.